

## APPEAL NO. 010520

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on November 14, 2000. A second session of the hearing was held on February 8, 2001, and the record closed on that date. With respect to the issues before her, the hearing officer determined that the appellant (claimant) was not an employee of (employer) within the meaning of the 1989 Act; that as such, he is not entitled to workers' compensation coverage through employer's contract of insurance with the respondent (carrier); and that he did not have disability within the meaning of the 1989 Act because he did not sustain a compensable injury. In his appeal, the claimant argues that the hearing officer's determination that he was not an employee of employer at the time of his injury at work is against the great weight of the evidence. The claimant also requests that we render a decision in his favor on the disability issue in accordance with the hearing officer's unappealed factual finding that the claimant was unable to obtain and retain employment at wages equivalent to his preinjury wage as a result of the \_\_\_\_\_, injury from April 27, 2000, through the date of the hearing. In its response to the claimant's appeal, the carrier urges affirmance.

### DECISION

Affirmed.

The hearing officer did not err in determining that the claimant was not the employee of the employer, which had workers' compensation coverage with the carrier, on \_\_\_\_\_. On that date, the claimant slipped and fell from the second floor of an apartment building he was painting, landing on the ground and injuring his right arm and right leg. There was little dispute that the claimant was hired as a painter by Mr. G, who the employer contends was the subcontractor it hired to do the painting on an apartment restoration project where the employer was the general contractor. However, there was conflicting evidence on the nature of the relationship between Mr. G and the employer. The resolution of that question also resolves the issue of whether the claimant was an employee of the employer or of Mr. G. The hearing officer resolved the conflicts in the evidence by determining that the employer was a hiring contractor, that Mr. G was an independent contractor, and that the claimant was an employee of Mr. G. Nothing in our review of the record demonstrates that the hearing officer's determinations in that regard are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse the hearing officer's decision on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Given our affirmance of the determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that the claimant did not have disability. By definition, the existence of disability is dependent upon there being a compensable injury. Section 401.011(16).

The hearing officer's decision and order are affirmed.

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Michael B. McShane  
Appeals Judge